

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NINA SHAHIN,

Plaintiff;

v.

C. A. No. 08-295 GMS

LIGUORI, MORRIS & YIENGST, et al,

Defendants.

MOTION TO DISMISS

COMES NOW, Defendant Liguori, Morris & Yiengst (“LMY”), by and through their undersigned counsel, pursuant to Fed. R. Civ. P. 12(b)(6), and moves this Court for an order DISMISSING Plaintiff’s Complaint against it. In support hereof, LMY submits an opening brief filed herewith and states the following:

1. Plaintiff has failed to allege facts from which the Court may find the essential elements of any cause of action against LMY.
2. Plaintiff has failed to allege two or more predicate acts which are sufficiently related so as to infer a pattern of racketeering activity upon which a civil claim under RICO may be based.
3. Plaintiff has no private cause of action under 18 U.S.C. § 241 or § 242 (*McCauley v. Computer Aid, Inc.*, 447 F. Supp. 2d 469, 477 (E.D. Pa. 2006; *aff’d*, 242 Fed. Appx. 810, 813 (3rd Circ. 2007) (*dismissal affirmed*; 18 U.S.C. §§ 241 & 242 do not create a private cause of action).
4. Plaintiff has no private cause of action under 18 U.S.C. § 1506 (*Hamilton v. Reed*, 29 F. Appx. 2d 202, 204 (6th Circ. 2002); *cert. denied*, 536 U.S. 971 (*dismissal affirmed*; 18 U.S.C. § 1506 does not create a private cause of action)).
5. Plaintiff has no private cause of action under 18 U.S.C. § 1512 (*Gipson v. Callahan*, 18 F. Supp. 2d 662, 668 (W.D. Tex. 1997); *dismissed w/o opinion*, 157 F.3d 903 (5th Circ. 1998)).
6. Plaintiff has no private cause of action under 18 U.S.C. § 1513 (*Rojas v. Debevoise & Plimpton*, 1994 U.S. Dist. LEXIS 9382 (S.D.N.Y. 1994)).

7. Even if a private cause of action were to exist under these criminal statutes, Plaintiff has failed to allege any facts supporting any colorable claim against LMY for violations of 18 U.S.C. § 241, § 242, § 1506; § 1512; or § 1513.

8. Alleged violations of the Delaware Lawyers' Rules of Professional Conduct do not create a basis for civil liability (*Marino v. Richards Layton & Finger*, 160 Fed. Appx. 268, 269 (3rd Cir. 2005)).

9. Alleged violations of the judicial rules of civil procedure do not create a basis for civil liability (*See e.g. Marcus Hook Dev. Park, Inc. v. Lampl, Sable & Makoroff*, 153 B.R. 693, 704 (Bankr. W.D. Pa. 1993)).

9. Plaintiff is collaterally estopped by adverse rulings by the Delaware Supreme Court and Third Circuit Court of Appeals from proving certain elements which are central to her claims against LMY.

10. Plaintiff's Complaint consists of conclusory statements and speculative allegations against LMY.

WHEREFORE, Defendant Liguori, Morris & Yiengst respectfully request that the Complaint be DISMISSED with prejudice.

Respectfully submitted,
**MARKS, O'NEILL,
O'BRIEN & COURTNEY, P.C.**

/s/ Theodore J. Segletes, III
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Dated: July 24, 2008

CERTIFICATE OF SERVICE

I, **Theodore J. Segletes, III**, hereby certify that on this **24th day of July, 2008**, I caused to be electronically filed with the Clerk of the Court a true and correct copy of Defendant Liguori, Morris & Yiengst's **Motion to Dismiss** using CM/ECF, which will send notification to all counsel of record that such filing is available for viewing and downloading.

I further certify that on this **24th day of July, 2008**, I caused a true and correct copy of Defendant Liguori, Morris & Yiengst's **Motion to Dismiss** and Opening Brief and Appendix in Support thereof to be served upon the Plaintiff via First Class Mail at the following address:

Ms. Nina Shahin
103 Shinecock Road
Dover, DE 19904

**MARKS, O'NEILL,
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